

Remarks

The present claims are 1-39. Favorable reconsideration of this application is respectfully requested. Claims 9 and 16 have been amended to correct the misspelling of the term “anti-angiogenic.” Claims 32 and 36 have been amended to more clearly recite the position of the permeable plug in relation to the open end of the unitary cup. The amendment of claims 9, 16, 32 and 36 does not narrow the scope of these claims. Support for these amendments can be found on page 18 of the specification and in the claims as filed. No new matter has been added.

Claims 1-39 have been rejected under 35 USC 103(a) as being unpatentable over Smith *et al.* (U.S. Patent No. 5,378,475) in view of Yaacobi (U.S. Patent No. 6,413,540 B1), Langer *et al.* (U.S. Patent No. 4,657,543), Ashton *et al.* (U.S. Patent No. 5,773,019), and Guo *et al.* (U.S. Patent No. 6,375,972 B1). This rejection is traversed.

None of the references cited by the Examiner teach or suggest a drug delivery device comprising a “unitary cup comprising an open top end” having a permeable plug “positioned at said open top end of said unitary cup” as set forth in each of the pending claims.

The Smith *et al.* patent is cited in the office action as teaching “an implantable sustained-release drug delivery device with an inner core or reservoir comprising an effective agent, an impermeable first coating layer, and a permeable second coating layer. The first coating covers at least a portion of the inner core and leaves a small portion of the core uncovered.” (Paper No. 6, page 2) The office action acknowledges that the “Smith *et al.* patent does not teach a structure with a lip designed to retain a coated tablet in place, nor does it teach the use of a drug of low solubility.” (Paper No. 6, page 3) Smith *et al.* also fails to teach a drug delivery device comprising a “unitary cup comprising an open top end” having a permeable plug “positioned at said open top end of said unitary cup” as set forth in each of the pending claims. None of the references cited in the office action cures this defect of Smith *et al.*

The Yaacobi patent is cited in the office action as teaching “a drug delivery device comprising an inner drug core and a body having an internal surface to be placed proximate to a target tissue (See Abstract). A retaining member prevents the drug core from falling out of the body. It may be in the form of a continuous rim or lip around the circumference of the opening in the body; alternatively, the retaining member may comprise multiple members that extend from the body into the opening.” (Paper No. 6, page 3) The drug delivery device of the Yaacobi patent does not comprise a “unitary cup comprising an open top end” having a permeable plug

“positioned at said open top end of said unitary cup” as set forth in each of the pending claims. Moreover, the Yaacobi patent teaches away from a drug delivery device comprising a “unitary cup comprising an open top end” having a permeable plug “positioned at said open top end of said unitary cup” as set forth in each of the pending claims. Specifically, at column 6, lines 40-44, the Yaacobi patent sets forth:

In particular, the absence of a polymer layer or membrane between inner core 26 and the underlying tissue greatly enhances and simplifies the delivery of an active agent to the target tissue. (Yaacobi, col. 6, lines 40-44)

The remaining references cited in the office action fail to correct the deficiency of Smith *et al.* and Yaacobi to teach or suggest the claimed invention.

The Ashton *et al.* patent is cited as teaching “an implantable, sustained-release drug delivery device with an inner core containing an agent of low solubility, and a permeable polymer layer coating the core.” (Paper No. 6, page 4)

The Guo *et al.* patent is cited as teaching “a sustained-release drug delivery device comprising an inner core or reservoir including the effective agent.” (Paper No. 6, page 4)

Because the combination of references cited in the office action fail to teach or suggest a drug delivery device comprising a “unitary cup comprising an open end” having a permeable plug “positioned at said open end of said unitary cup as set forth in each of the pending claims, the combination relied upon by the Examiner does not render obvious the presently claimed invention. Therefore, the rejection of claims 1-39 under 35 USC 103(a) for obviousness is improper and should be withdrawn.

Claims 1-39 have also been provisionally rejected under the judicially created doctrine of obviousness-type double patenting. If this aspect of the rejection is made non-provisional, applicants will submit an appropriate terminal disclaimer.

The Examiner is invited to contact the undersigned to resolve any remaining issues.

Respectfully submitted,



Glenn D. Smith

Registration No. 42,156

Bausch & Lomb Incorporated
One Bausch & Lomb Place
Rochester, New York 14604
Tel: 585 338 6142
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